

HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO.541 OF 2006

BETWEEN

Nellore Fisher Workwomen Cooperative Society, Nellore

.....

Appellant

And

N. Ravi Prasad Babu & others

.....**Respondents**

:: JUDGMENT ::

Counsel for the Appellant : Shri Nuthalapati Krishna
Murthy

Counsel for Respondent No. 1 : Shri D. Srinivas

Counsel for Respondent Nos.2 and 3 : Government Pleader for
Municipal

Administration and

Urban Development

Counsel for Respondent No.4 : Shri S. Venkateswara
Reddy

Dated: 06-06-2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 07.03.2006 passed by the learned Single Judge in Writ Petition No. 23061 of 2005, whereby he refused to nullify the contract awarded to the appellant for collection of market fee in the fish market (Dycus Road), Nellore, but directed that auction be conducted before 31.03.2006 for leasing out the right to collect market fee.

It is borne out from the record that till the year 2004-05, Municipal Corporation, Nellore was auctioning the right to collect market fee in the fish market situated at Dycus Road. In the year 2004, the appellant represented to the Government for being permitted to collect market fee without conducting auction. After some time, the appellant filed Writ Petition No.10169 of 2004, which was disposed of by directing the State Government to decide the representation of the petitioner. As a sequel to this, the competent authority granted permission to the appellant to collect market fee for the year 2004-05. This was repeated for the year 2005-06. Respondent No.1 challenged the action of the Municipal Corporation, Nellore to allow the appellant to collect market fee. He pleaded that if the auction is conducted, the market fee would fetch approximately Rs.1,45,000/- and he was prepared to pay an amount of Rs.4 lakhs during the year 2005-06 for the right to collect market fee. The same was disposed of by the learned Single Judge by giving direction to which reference has been made hereinabove.

We have heard learned counsel for the parties and perused the record. Although, the direction given by the learned Single

Judge appears innocuous, we find it to be untenable because, Section 534 (c) of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), which is applicable to Nellore Municipal Corporation, confers discretion upon the Commissioner to grant lease either by public auction or by private sale subject to the approval of the Standing Committee. In our view, instead of giving a mandatory direction to the Municipal Corporation to conduct auction, the learned Single Judge should have left it to the competent authority to take appropriate decision in accordance with the provision contained in Section 534 (c) of the Act.

For the reason afore-stated, the appeal is allowed and the direction given by the learned Single Judge for conducting auction for leasing out the right to collect market fee in the fish market (Dycus Road), Nellore is set aside. The Commissioner, Municipal Corporation, Nellore shall now be free to lease out the right to collect market fee in the fish market (Dycus Road), Nellore in accordance with Section 534 (c) of the Act.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

06.06.2006

ksld/svs